(S)

(26)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.881/2001

DB: Hon'ble L.C. Bhadoo,
Hon'ble Sunil Kumar Sinha, J, J

Appellant	Meghraj, s/o Bidesingh, aged about 38 years, r/o Pardoni, P.S. Manpur, Distt. Rajnandgaon (C.G)
	Vs.
RESPONDENT	State of Chhattisgarh, through the S.H.O. P.S. Manpur, Distt. Rajnandgaon. (C.G)

Appeal under Section 374(2) of the Code of Criminal Procedure

---

Appearance:

Smt. Savita Tiwari, counsel for the Appellant.

Shri U.K.S. Chandel, Panel Lawyer, for the State.

ORAL JUDGMENT
(07.9.2007)

The following judgment of the Court was delivered by

L.C. Bhadoo, J,

(1) This appeal is directed against the judgment of conviction and order of sentence dated 22.6.2001 passed by the Ist Addl. Sessions Judge, Rajnandgaon in Sessions trial No.36/2001 whereby the learned Addl. Sessions Judge, after holding the accused appellant guilty for commission of the offence u/ss 302 & 201 I.P.C. for committing murder of his son, namely, Yogendra Kumar, a child aged about 4 months and thereafter screening the evidence of offence in order to save himself from facing legal punishment, sentenced him to undergo imprisonment for life and R.I. for 3 years respectively. It was directed that both the sentences to run concurrently.

(27)

(2) The prosecution case in brief is that in the night of 4.11.2000 at about 10.00 p.m. Gayabati Bai (P.W.3) was sleeping alongwith her 4 months child Yogendra Kumar. When she woke up at about 2 a.m. to feed the milk to the child, she saw that the child was not on the cot, search was made but the whereabouts of the child could not be traced out, therefore, she informed the Patel Matkul about the incident and on the instructions of Matkul, 2-3 ladies also searched the child in the night itself, but whereabouts of the child could not be traced. In the morning again, search was made but the child could not be traced out, therefore, the Patel sent a person who informed and called the accused appellant Meghraj (father of the deceased) from village Navatola and thereafter the accused and Gayabati went to the Police Station for lodging the report, but the report was not registered. On 6.11.2000, K.R.Nirala, A.S.I., went to the village Pardoni where Gayabati gave merg intimation, based on which, he recorded the missing report Ex.P.9 & *Dehati Nalishi.* The F.I.R. was registered on 7.11.2000 based on *Dehati Nalishi.* The site plan Ex.P-1 was prepared by Halka Patwari. Ex.P.2 was prepared by the Investigating Officer. Site plan Ex.P.3 where the body was found was prepared by A.S.I. While in Police Custody the accused gave memorandum Ex.P.4 on 8.11.2000 and in pursuance of that, recovery Panchnama of the body Ex.P.5 was prepared. The I.O., gave notice to the Panchas and prepared inquest Ex.P.7 on the body of Yogendra Kumar. The body of Yogendra was sent to Primary Health Center, Manpur, for postmortem under Ex.P.10, where Dr. Mohanlal Teka (P.W.5) conducted the postmortem and opined that cause of death was asphyxia due to strangulation and the death was homicidal in nature. He prepared the Postmortem report Ex.P.11. After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Ambagarh Chowk, who in turn committed the case to Sessions Judge, Rajnandgaon, from where the learned Addl. Sessions Judge received the case on transfer for trial.

(28)

(3) The prosecution in order to establish the charges against the accused examined 8 witnesses. The statement of the accused was recorded u/s 313 Cr.P.C. in which he denied the material appearing against him in the prosecution evidence, pleaded that he is innocent and he has been falsely been implicated in the crime in question.

(4) The learned Addl. Sessions Judge after hearing counsel for the respective parties convicted and sentenced the accused appellant, as aforementioned.

(5) We have heard Smt.Savita Tiwari, counsel for the accused appellant and Shri U.K.S.Chandel, Panel Lawyer, for the State.

(6) Smt. Tiwari has not disputed the homicidal death of the child namely Yogendra Kumar. Moreover, Dr. Mohanlal Tekam (P.W.5) has stated that on 8.11.2000 he was working as Assistant Surgeon and on that day, he conducted the postmortem on the body of Yogendra, aged about 4 months, there was clotted blood on the mouth and left ear, there were black marks round the neck of the child. On opening the neck, it was found that trachea was broken. He opined that the death was caused more than the duration of 72 hours and the cause of death was asphyxia due to throttling. Therefore, in view of this evidence of Doctor, the death of Yogendra was homicidal in nature.

(7) So far as the involvement of the accused in the crime in question is concerned, there is no direct or ocular evidence connecting the accused with the said crime. The prosecution has tried to establish the charges against the accused on the following circumstances.

(i) that the accused made extra judicial confession before Matkoor (P.W.7),

(ii) that the dead body of the child Yogendra Kumar was recovered at the instance of the accused from hillock

(29)

(8) As per the settled law, in order to rest conviction of an accused based on the circumstantial evidence, the prosecution is required to establish the following points in view of the decision of the Apex Court rendered in the matter of ***Dhananjoy Chhatterjee –Vs- State of W.B., (1994) 2 SCC 222***, which is quoted below:

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

(9) As far as the first circumstance is concerned, P.W.7 Matkoor has stated that on the fateful day, the accused had gone to see the dance in village Navatola and wife of the accused was sleeping in the house. When the boy was not traced out, the accused was informed by two villagers. He was called from village Navatola. When the accused returned, the enquiries were made from him as to how the boy has disappeared, thereafter, it was decided to go to Police Station, therefore, he alongwith the wife of accused and the accused himself went to police station. The accused was interrogated in the police station but he pleaded innocence. After 4-5 days, the accused disclosed in the police station that he has committed the act of madness by keeping the body of his son in the forest and said that he has committed that mistake. He has further stated that the police personnel asked the accused in the village as to where the child is, then only the accused disclosed that the child is on the hillock. He took them to the site where the dead body of child was lying. The police personnel prepared the

papers Ex.P-5, P-6 & P-7 and the accused was arrested. In view of the above evidence of this witness, it cannot be said that the accused made extra judicial confession before this witness. In fact, when the Police brought the accused to the village after 4-5 days, where he stated that where he has kept the body of the child and even he has stated that when the enquiries were made in the police station, in the first instance, he stated that he does not know anything and after 4-5 days in the police station, stated that he became mad. He has kept the body in the forest. Based on the above evidence, it cannot be held that the accused made extra judicial confession before this witness. In order to place reliance on extra judicial confession, it must be established that the extra judicial confession was voluntary and true. In the present case, based on the evidence available on record, it can not be said that accused made extra judicial confession voluntarily. Therefore, the prosecution has utterly failed to establish that the accused made extra judicial confession before this witness.

(10) Even P.W. 1 Sardar Singh has stated that after 4 days of the death of the child, accused disclosed that he has committed the murder of boy, at the house of Patel Matkul the accused disclosed that he took the boy from the house to the forest, he committed the murder and concealed the body in a pit, but in his cross examination in para 8 he has stated that the police personnel brought the accused 3 days later in the village and the police informed them that now they should enquire from the accused, he will tell every thing. It is correct that when they enquired from the accused in presence of the police, the accused disclosed, but he cannot say that the accused disclosed on his own free will or on the pressure of the police. In para 7 he has stated that when they went to the Police station to lodge the report, the wife of accused and other persons were asked to go back to their village, but they asked the accused Meghraj to stay there. He was kept in the police station for 3 days. From the above evidence of this witness, when the accused alongwith his wife and other persons went to the

(31)

police station to lodge the report and the police asked all the villagers alongwith the wife of accused to go back and Meghraj was asked to stay back and as per the evidence of this witness in para 8, after 3 days, the police brought the accused in the village. They were asked to enquire from the accused now he will disclose every thing to them. This evidence shows that from the very first day the accused was in the police custody and there was no occasion for him to make extra judicial confession before this witness or other villagers without the presence of the police. Therefore, on the basis of evidence of this witness also, the prosecution has failed to establish that the accused has voluntarily made extra judicial confession in the presence of this witness. Therefore, the theory of extra judicial confession has not been able to satisfactorily establish by cogent, legal clear evidence.

(11) As far as the recovery of the body of the Yogendra at the instance of accused is concerned, that itself appears doubtful for the reason that the case of the prosecution is that when Gayabati was sleeping in the house alongwith her children, some body took away her 4 months old child and when she woke up at 2 a.m., in order to feed milk to the child, the child was not present in the room, who was sleeping on the same cot with mother Gayabati, search was made in the night itself and even the Patel of the village was informed but the whereabouts of the child could not be traced out. It is the consistent evidence on record that accused left for village Navatola to watch the dance, P.W.3 Gayabati herself has stated that when she alongwith her children were sleeping in the house, her husband had gone to village Navatola for watching dance, at what time he left the house she does not know. When she woke up at about 2 a.m., her son was not on the cot, even the Investigating Officer, P.W.8 K.R. Nirala in para 9 of his evidence has categorically stated that during the investigation he came to know that in the fateful night when the boy was kidnapped the accused has gone to village Navatola to watch the dance, he also came to know that on the next day morning villagers went to

(32)

Navatola to call the accused. Even P.W.1 Sardar Singh in para 9 has stated that it is correct to say that on the day when the boy disappeared, the accused had gone to another village. P.W.4 Chaituram in para 5 of his evidence has stated that it is correct to say that in the night of the incident, the accused had gone to village Navatola and two persons went to the village Navatola to call him.

(12) The story set forth by the prosecution itself is that as per the memorandum Ex.P.4 based on which the body of the boy is said to have been recovered, it was disclosed by the accused that on the night when the boy was kidnapped at about 10 p.m. he came to his house, and after opening the door he asked his wife to provide food but she did not responded, therefore, he pressed the neck of the child and lifted him and committed the murder after pressing his neck. When the child died, he took him to a distance of half kilometer and kept the body beneath the stone on a hillock. When this accused came to the house and asked his wife to wake up but she did not wake up then he pressed the neck of the boy in the room itself and he took up the body to the forest, why this fact was not disclosed by Gayabati to the Patel and other villagers at about 2 a.m. when she was searching about the baby.

(13) Now coming to the memorandum and recovery of the body in pursuance of that, as per the prosecution evidence when the accused returned from village Navatola, enquiries were made from him as to how the boy was missing and he said that he does not know anything, thereafter the accused, his wife or P.W.1 Sardar Singh went to the Police Station to lodge the report and where except the accused every body was asked to go back to the village, however, the accused was asked to stay there and continuously he was with the police w.e.f. 5.11.2000 and for the first time, he was brought in village on 8.11.2000 by the Police and thereafter the *Merg intimation* Ex.P.13 was recorded by the I.O. to the effect that as per the directions of the S.H.O., Police station he went to the

(33)

village Pardoni that is the village of the accused and in the night of 04.11.2000 at about 10 p.m., he committed murder of his son by pressing neck and took the body to the hillock, where he kept the body under a stone and based on the memorandum the body was recovered from the place disclosed by the accused. The accused was already with the Police since 05.11.2000 and for the first time this memorandum was recorded on 8.11.2000. Moreover, the memorandum Ex.P.4 does not bear the signature of the accused and the said memorandum was recorded by the Police when he was brought to the village, informed the villagers that now the enquiries be made from the accused, he will tell every thing which has come in the evidence of P.W.1 Sardar Singh in para 8, therefore, this memorandum itself becomes doubtful and resultantly the recovery in pursuance of that memorandum also becomes doubtful and unreliable.

(14) A perusal of the photographs Ex.P.8 which are on record of the trial Court shows that the body was lying in an open place. This fact is also creating suspicion. How a body for 4 days in that open place, that too in a forest area, remained intact because as per the natural course any wild animal could have eaten the body of child within this period. The photograph shows that the body was totally intact, even the skin on the body was intact. The P.W.5 Dr.Mohanlal Tekam, has stated that rigor mortis was not present, tongue was protruded, eyes were open, foul smell was present and some clotted blood was present on the mouth & left ear. How for 4 days the body remained in that position is also creating doubt. This shows that the body which was already kept is within the knowledge of the people and the police and the photographs were taken prior to 8.11.2000. Therefore, in the above circumstances, it cannot be said that the body was discovered at the instance of the accused. In view of what has been discussed earlier, the prosecution has failed to establish the above circumstance also.

(34)

(15) In the result, for the foregoing reasons the finding of the trial Court cannot be sustained. The appeal filed by the accused appellant succeeds. The conviction and sentence imposed upon the appellant u/s 302 & 201 I.P.C., are set aside and he is acquitted of those charges. The accused is said to be in detention since 8.11.2000. He be set at liberty forthwith, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge

/Rao/